IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 568 of 2001
IN
SPECIAL CIVIL APPLICATION No 3943 of 2001

WITH

LETTERS PATENT APPEAL No 569 of 2001
IN
SPECIAL CIVIL APLICATION No 4246 of 2001

AND

CIVIL APPLICATION No 1792 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHIBULLAH USMANBHAI SHAIKH
Versus
STATE OF GUJARAT

Appearance:
1. LETTERS PATENT APPEAL No. 568 of 2001
PARTY-IN-PERSON for Appellant No.

GOVERNMENT PLEADER for Respondent No. 1-2

2. LETTERS PATENT APPEAL No. 569 of 2001

PARTY-IN-PERSON for Appellant No.

GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 25/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. All these matters are disposed of by this common judgment, as the appellant is the same.

2. Appellant - petitioner is a retired employee of the State Government. He was working on the post of Junior Clerk and promoted on the post of Junior Employment Officer Cadre with effect from 30/10/1986. However, his grievance was that he should have been promoted on the post of Junior Employment Officer Cadre with effect from 30/4/1981. Earlier he had filed Special Civil Application No. 60 of 1991 for claiming promotion, etc. and thereafter Special Civil Application No. 1362 of 1991 was filed claiming miscellaneous benefits. Both the said petitions were disposed of by common judgment and order dated 2/5/2000 passed by learned Single Judge of this Court [Coram : Kundan Singh, J.], by which Special Civil Application No. 1362 of 1991 for miscellaneous benefits was dismissed, whereas Special Civil application No. 60 of 1991 was allowed and the judgment and order dated 14/1/1981 passed by the Gujarat Civil Services Tribunal, Gandhinagar (for short 'Tribunal') in Appeal No. 47 of 1980 and the judgment and order dated 20/10/1989 in Appeal No. 387 of 1988 of the Tribunal as well as the orders dated 7/7/1976, 12/11/1976 and 23/9/1988 passed by the Director were quashed and set aside and the respondent was directed to treat the petitioner in continuous service as Office Assistant (Sr. Clerk) with effect from 7/7/1976 and give all consequential benefits. The Director was further directed to calculate difference of pay, allowance and other benefits permissible under the Rules till his retirement date within three months from the date of the order. The said judgment of the learned Single Judge [Coram : Kundan Singh, J.] was accepted by the respondents and they have passed the order dated

24/8/2000 (Annexure-A to the main writ petition i.e. Special Civil Application No. 3943 of 2001) and the petitioner was given benefits with effect from 30/10/1986. Therefore, he filed the writ petition i.e. Special Civil Application No. 3943 of 2001 and prayed that he should have been given benefits with effect from 30/4/1981 instead of 30/10/1986 and other consequential benefits of the services were also claimed.

Special Civil Application No. 4246 of 2001 was filed by the appellant - petitioner wherein it was prayed that the respondent be directed to pay Rs.14 lacs towards compensation, litigation expenses, interest, etc. in addition to Rs.1,39,070/= already paid to him in pursuance of the order dated 24/8/2000. Thus, Special Civil Application No. 4246 of 2001 was an incidental petition to Special Civil Application No. 3943 of 2001.

3. Both the petitions were disposed of on the same day i.e. 20/6/2001 by the learned Single Judge of this Court [Coram : P.B. Majmudar, J.]. Special Civil Application No. 3943 of 2001 was dismissed by the learned Single Judge on the ground of gross delay and laches, without going into the merits of the case.

Special Civil Application No 4246 of 2001 was dismissed on the ground that it was an abuse of process of the Court.

4. We have heard appellant - Mohibullah Usmanbhai Shaikh appearing as party-in-person. Though served, no-one appears for the respondents. Both the Ld. AGPs Mr. Mukesh patel and Ms. Nandini Joshi, who are present before the Court, stated that they have no instructions in the matter. The appellant is aged 67 years. Thus he is a senior citizen. He is a retired person. Therefore, we have heard him in person and decided both these appeals.

5. From the order passed by the learned Single Judge on 20/6/2001 in Special Civil Application No. 3943 of 2001, it clearly appears that the learned Single Judge has dismissed the writ petition only on the ground of gross delay and laches without going into merits of the case. In the facts and circumstances of the case, we are of the considered opinion that it ought not to have been dismissed on the ground of delay and laches because the respondent passed the order at Annexure-A only on 24/8/2000, whereas the petition was filed in the year 2001. Such order was passed in pursuance of the directions given by the learned Single Judge of this Court [Coram : Kundan Singh, J.} in Special Civil

Application No. 60 of 1991. Thus, there was no inordinate delay on the part of the appellant petitioner to challenge the order at Annexure-A. Therefore, the judgment and order passed by the learned Single Judge dismissing the Special Civil Application No. 3943 of 2001 is required to be quashed and set aside and the matter is required to be remitted to the learned Single Judge with a request to decide the same on merits. Accordingly, Letters Patent Appeal No. 568 of 2001 filed in Special Civil Application No. 3943 of 2001 is allowed and the judgment and order dated 20/6/2001 passed by the learned Single Judge dismissing the writ petition is hereby quashed and set aside and the matter is remitted to the learned Single Judge with a request to decide the same on merits as early as possible, preferably by the end of November, 2003, as the appellant - petitioner is a senior citizen.

6. This brings us to Letters Patent Appeal No. 569 of 2001 which is arising out of the judgment and order dated 20/6/2001 passed by the learned Single Judge dismissing Special Civil Application No. 4246 of 2001. The learned Single Judge dismissed the same on the ground that the petitioner was trying to take advantage of the situation by claiming Rs.14 lacs and according to the learned Single Judge, filing of such petition was nothing but abuse of process of the Court and, therefore, prayer made by the petitioner cannot be granted. However, the learned Single Judge himself in his order observed that "It is no-doubt true that if there is inordinate delay on the part of the State Government without any justification in making the payment, interest can be awarded in such cases."

7. As stated earlier, we have allowed his main Letters Patent Appeal, whereby he was claiming benefits from 1981 instead of 1986. If he succeeds on merits, then the Special Civil Application No. 4246 of 2001 is required to be considered. If he does not succeed, then obviously that petition would not survive. In that view of the matter, the judgment and order dated 20/6/2001 passed by the learned Single Judge in Special Civil Application No. 4246 of 2001 is also required to be quashed and set aside and accordingly Letters Patent Appeal No. 569 of 2001 is allowed and the judgment and order dated 20/6/2001 passed in Special Civil Application No. 4246 of 2001 is hereby quashed and set aside and the matter is remitted to the learned Single Judge to decide the same in accordance with law, with a request that the same may be decided as early as possible and preferably by end of November 2003m as the appellant is a senior

citizen.

No order on Civil Application as the main Letters Patent Appeal No. 569 of 2001 is allowed.

[B.J. SHETHNA, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.